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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/333,894	06/14/1999	ARSHISH Cyrus KAPADIA	0544MH-3426	4656

7590 02/18/2004

ATTEN: CHRISTOPHER W. KENNERLY, ESQ.  
BAKER BOTTS L.L.P.  
2001 ROSS AVENUE  
SUITE 600  
DALLAS, TX 75201-2980

EXAMINER
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FADOK, MARK A

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 02/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/333,894

Applicant(s)

KAPADIA ET AL.

Examiner

Mark Fadok

Art Unit

3625



--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

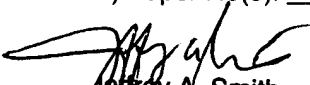
Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
Jeffrey A. Smith  
Primary Examiner

Continuation of 5. does NOT place the application in condition for allowance because: The applicant's arguments have been carefully considered, but were found not to be persuasive. Generally, in response to applicant's arguments, applicant argues that the cited references do not contain the word optimum or its derivatives in a clear manner. However, Webster defines optimization as "an act, process or methodology of making something (as a design, system or decision) as fully perfect, functional, or effective as possible. Clearly Rhythm states this objective on page 4, line 15 "RHYTHM, on the other hand, generates a constraint-driven plan that simultaneously accounts for demand, material, and capacity and continually adjusts the plan based on the changing dynamics of the supply chain. Because it considers all dynamic elements that determine the actual total lead time, it results in an accurate, constraint-based plan that forms the basis to quote reliable promise dates."

Applicant also attacks RYHTHM singularly and not in combination with Henson. For instance, the combination of Henson/RYHTHM clearly provides optimal default selection. This is based on the Webster dictionary definition of default being described as "a selection automatically used by a computer program in the absence of a choice made by the user. The combination of Henson and RHYTHM would assure that the selection provided to the user was the optimal choice (see above).

Applicant argues in regards to claims 10 and 20 that the combination of Henson and RHYTYM do not provide to the user an option set that presents only the option set which is actually available to the user within the user specified date constraint. Although, as applicant argues, Henson provides a warning indicator that shows that the provided option set is not one that is available to the user within the user specified date constraint, the examiner points to RHYTHM and the cited reference above that provides quotes based on provided constraints.

In response to applicant's further arguments concerning hindsight reasoning and improper combination, the examiner directs the applicant's attention to the previous office action. .